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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,177	06/20/2003	George E. Barringer JR.	3551.1004-000	9752

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EXAMINER

NOGUEROLA, ALEXANDER STEPHAN

ART UNIT	PAPER NUMBER
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1795

MAIL DATE	DELIVERY MODE
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06/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/600,177</p>	<p>Applicant(s) BARRINGER ET AL.</p>	
	<p>Examiner ALEX NOGUEROLA</p>	<p>Art Unit 1795</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Alex Noguerola/
Primary Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because: It is the Examiner's view that when Virtanen's patent in full is fairly considered along with the contemporay state of the art one with ordinary skill in the art would understand Virtanen to teach a controller as set forth in claim 27. Applicant disagrees. Although Virtanen states, "Operation of the entire apparatus can be controlled by means of a micro-processor." and discloses operatively adjusting, controlling, modifying, and setting initial and boundary conditions for operation parameters such as pumping time, electric field, and flow rate, in Applicant's view Virtanen at best discloses providing dials so that a person may manually adjust operating parameters as desired or needed. While such dials may be present Virtanen clearly is primarily concerned with an automated or programmable electrophoresis apparatus. Besides all of the passages cited in the Final Rejection that the Examiner believes would suggest to one of ordinary skill in the art automation or programming, Virtanen states, in a general background discussion of capillary electrophoresis, "In addition, capillary electrophoresis can be readily automated." See col. 01:34-35. Virtanen discloses setting initial and boundary conditions for certain paramaters, yet arbitrarily modifying test conditions during a run. See col. 02:29-44. It is unlikley Virtanen contemplated a person constantly making measurements or reading meters, making calulations, and twirling dials to ensure a successful electrophoresis run. It is more likely Virtanen contemplated a software that allows the user to set some initial and boudary conditions and based on these conditions and feedback input from the apparatus on operating conditions and parameter values to make adjsutments accordingly. Moreover, claim 27 is unpatentable because claims that depend therefrom are unpatentable. In regard to the rejection of claim 28, for example, the Examiner disagrees that a person of ordinary skill in the art "... would not turn to the teachings of Nikiforov regarding interpreters for use in a capillary electrophoresis system to implement a sophisticated layer of processing between an end-user and a microcontroller," (page 15 of Applicant's response) especially since Nikiforov discloses performing electrophoresis in capillary dimensioned microchannels. See col. 09:21-29; col. 10:12-16; col. 10:48-55; and col. 08:40-50. At any rate, whether electrophoresis or another electrokinetic process Nikiforov's system is configured to apply an electric field across capillary-sized channels so as to move bulk fluid or charged particles and as such is analogous art to Virtanen's capillary electrophoresis apparatus.

The Examiner has considered Dr. Barringer's Declaration. In the Examiner's view it is unpersuasive because it is partly at variance with a fair reading of Virtanen and Nikiforov and partly argues about details that are not in the claims. The Declaration is at variance with Virtanen and Nikiforov because unlike Dr. Barringer's assertions in paragraphs 11-13 that one of ordinary skill in the art would not be able to configure nor would desire a capillary electrophoreisis system configured to receive operational input from an end user, Virtanen and Nikiforov teach otherwise, as discussed above. The Declaration in paragraph14 argues about the form of the operational input, such as, being a set of English phrases, that is not in the claims.

In sum, Applicant does not recognize how broad the claims are and is reading into them details that are not positively recited. For these reasons the rejections of claims 27-52 are maintained.